

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Walnut Creek, CA)

**MICHAEL STEAD, INC. d/b/a
MICHAEL STEAD'S
WALNUT CREEK FORD**

Employer

and

Case 32-RC-4789

**MACHINISTS AUTOMOTIVE TRADES
DISTRICT LODGE NO. 190 OF NORTHERN
CALIFORNIA, LOCAL LODGE NO.1173,
INTERNATIONAL ASSOCIATION OF
MACHINIST AND AEROSPACE WORKERS,
AFL-CIO**

Petitioner¹

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find, that the Employer, a California corporation, is engaged in the sales and service of automobiles at its Walnut Creek, California facility. During the past twelve month period, the Employer has received gross revenues in excess of \$500,000 and during the same period of time purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California. Based on the foregoing, I find

¹ Petitioner's name appears as stipulated to at the hearing.

² A brief filed by the Employer has been duly considered. The Petitioner did not file a brief.

that the Employer is engaged in commerce within the meaning of the Act and, accordingly, the assertion of jurisdiction is appropriate herein.

3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a unit consisting of all full time and regular part-time automotive (service) technicians including trainees employed at the Employer's Walnut Creek facility excluding all other employees. The Employer, however, contends that the only appropriate unit would include not only the service technicians but also all parts department employees except the parts department clerical employee. The Employer argues that only this unit is appropriate based on bargaining history and traditional community of interest factors.

Prior to September 1989, this particular dealership operated as Don Young Ford and for some period of time recognized Petitioner and Teamsters Local 315 as the joint representative of a bargaining unit which included service technicians, body shop employees and parts department employees except the parts clerical employee.³ In February 1990 in Case 32-RM-628, a majority of the Employer's then bargaining unit employees voted against representation by the Petitioner and Teamsters Local 315. The results of this election were certified on February 21, 1990.

Under the current owner, the service and parts department share an L-shaped building across the street from the sales showroom. The parts department is at the base of the L and the service department is in two bays extending out from the parts department. The parts department is walled off from the two service bays. Ernie Campora is the assistant general manager and in charge of both the parts and service departments although he is not always present at the facility because he also manages another dealership owned by the Employer. The parts manager is Tim Gareis. Tim Lautze is the service director and Tom Saylor is the service manager. The parties stipulated, and I find that Campora, Gareis, Lautze and Saylor are statutory supervisors.

The parts department includes front and back counter parts technicians, stockroom clerks, parts drivers, an assistant parts manager and a clerical. The front and back counter are separated by a large space where the parts are stored on shelves. The back counter has four windows which open to the outside where the service technicians stand to pick up the parts they have requested. The front

³ The Employer no longer operates a body shop at this facility.

counter technicians generally handle both retail and wholesale customers who walk in or call on the phone. The back counter technicians handle parts requests and part availability and price requests from service technicians. Stockroom clerks check-in and store parts received by the parts department. The two wholesale delivery drivers take parts out to wholesale customers and pick up parts the Employer needs. The remaining driver backs up the other two and does warranty paperwork. The clerical inputs information into the computer. The assistant parts manager spends about 60% of his time doing the same work as other parts employees including filling in at the counters. He does not have the power to hire or fire or discipline employees.⁴ Except for two of the three drivers who spend most of their time away from the shop, the parts employees spend virtually all of their work time in the parts department. The assistant parts manager is paid a salary and participates in the parts department bonus plan. The rest of the parts department employees are paid hourly and are eligible for bonuses based on total departmental sales. Counter technicians are also eligible for an additional bonus if they reach their monthly individual sales goals. The parts department employees work staggered shifts covering the period from 6:30 a.m. to 7 p.m. Monday through Friday. Parts employees are not required to have their own tools nor are special skills required for hire.

The service department includes service technicians, service writers, dispatchers, porters/lot attendants, detailers, warranty persons and clericals.⁵ There are 37 service technicians including a shop foreman.⁶ Of these, 27 are journeymen and 10 are trainees. Two of the trainees are asset trainees who for a two year period spend alternating six week periods in school and in the shop.⁷ Service technicians work in the service bays repairing and servicing customer vehicles. All but the two asset trainees are paid on a flat rate system. Under the flat rate system, service technicians' wages are determined by multiplying their hourly rate by the number of hours specified for a particular job in the flat rate handbook. Under this system for example, service technicians are paid two hours wages for a two hour job whether it takes one or three hours to complete. Sometimes the service department provides monthly bonuses for service department personnel based on the total volume of work performed. Service technicians participate in the monthly bonus programs. All other service department employees are paid hourly and are eligible to participate in the service department bonus program. The majority of the service technicians have ASE certifications and some have smog licenses. Service technicians are required to have their own tools and the value of each service technician's tools was estimated to be between \$5,000 and \$40,000. The service department is

⁴ The parties stipulated that the assistant parts manager is not a supervisor.

⁵ The parties stipulated that all service department employees with the exception of the service technicians should be excluded from any unit found appropriate.

⁶ The parties stipulated that the shop foreman is not a statutory supervisor and should be included in any unit found appropriate.

⁷ The parties stipulated that the asset trainees should be included in any unit found appropriate.

open Monday through Friday from 7 a.m. to 7 p.m. The service technicians work staggered shifts starting at 7 a.m.

There is some regular if brief interaction between service technicians and the back counter technicians. In this regard, when a service technician needs a part or information on the availability and price of a part, he inputs the request into a computer in the service area and the request is printed out in the parts department. A parts person then pulls the part and places it on the back counter for the service tech to pick up. When things work the way they are designed to, there is no reason for the service technician to engage in direct communication with the parts counter technician but instead the service technician merely picks up the part from the back counter. In fact, under the flat rate system there is a strong disincentive for the service technicians to engaged in conversation with the counter technicians because such conversation would increase the time spent on the jobs and thus reduce the service technicians' pay. However, if the wrong part is pulled or if the service tech has questions about the part, its availability or price, he will speak to the counter technician. Since most repair work requires the installation of new parts, the service technicians regularly go to the back counter to pick up parts and/or part availability and price information.

Most Parts employees as well as all service technicians wear company uniforms but the color of the uniforms worn by parts and service employees is different. The benefit plans available to parts and service employees are identical. Both parts and service employees punch time clocks located in their respective departments. Parts employees are entitled to both morning and afternoon breaks and a lunch break but only have to punch out for the lunch break. The record does not disclose if service technicians have morning or afternoon breaks but it does show that they usually do not take a formal lunch break but instead eat while they work. Parts and service employees do not share a common lunch or break room. Service employees have their own locker room with a bathroom but there is no real locker area for parts employees. Service technicians with the exception of the asset trainees average 50 hours a week while parts employees only occasionally work more than 40 hours. There has been no interchange of employees between the service technicians and parts department employees and no service department employee has transferred into the parts department or parts department employee into service department within recent history.

Analysis

Based on the foregoing and the record as a whole, I conclude that a unit limited to the service technicians is an appropriate unit. The Board has consistently held that service technicians (mechanics) who possess skills and training unique among other employees constitute a group of craft employees within an automotive or service department, and therefore, may if requested, be represented in a separate unit excluding other service and parts department

employees. *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990); *Dodge City of Wauwatosa*, 289 NLRB 459, 460 fn. 6 (1986); *Trevellyan Oldsmobile Co.*, 133 NLRB 172 (1961). Here, while the functions performed by of all of the Employer's service and parts department employees are similar and integrated to the extent they are all related to customer service and automotive repair, I find that the skill and training that must be possessed by the service technicians and the nature of the work they perform and the tools that they use set them apart from the rest of the service and parts department employees and they, therefore, share a community of interest apart from the parts employees the Employer seek to have included in the unit. In that regard, most of the service technicians, unlike parts department employees, are ASE certified and all but the 10 trainees are journeymen technicians, service technicians are the only employees who actually work on automobiles and are the only employees required to have their own tool.⁸ Moreover, the different method of compensation, separate supervision, and lack of interchange and transfer between the service technicians and parts department employees supports a conclusion that the parts department employees do not share such an overwhelming community of interest with the service technicians to require their inclusion in the petitioned-for unit.

The Employer argues that a unit composed of both the service technicians and the parts department employees is the only appropriate one based on the Board's reluctance to disturb historical bargaining units. However this argument is rejected for two reasons. First, most of the cases on which the Employer relies involve Section 8(a)(5) allegations that arose in the context of a successor employer refusing to bargain with an incumbent union for various reasons. Thus, in *Trident Seafoods, Inc.*, 318 NLRB 738 (1995), the employer refused to bargain as a successor employer, claiming that historically recognized units were inappropriate. Likewise, *ATS Acquisition Corp.*, 321 NLRB 712 (1996), also involved a successor employer who refused to bargain with recognized incumbent unions. Under those circumstances, the Board places heavy emphasis on bargaining history and requires a showing that the units have not remained intact after the takeover. The instant case, however, does not involve a Section 8(a)(5) allegation but rather a petition for election where the Union is, in a sense, seeking initial recognition. In such a situation, bargaining history is only one of many factors to be considered in making unit determinations. Moreover, unlike the earlier bargaining history with the predecessor employer when Petitioner along with Teamsters Local 315 represented the employees as a joint representative, the Petitioner is not seeking representation on a joint basis.

Similarly, the Board's decision in *Buffalo Broadcasting Co.*, 242 NLRB 1105, which did involve petitions for an election is also distinguishable in significant respects from the instant case. Thus, in *Buffalo* the petitioners were not involved in seeking initial recognition but rather a regrouping of three existing bargaining units. Moreover, in that case the Board treated prior bargaining

⁸ All of the trainees are in training to become journeymen technicians.

history as merely a factor and not a determinative one. Thus, despite a history of three separate units, the Board merged two of the existing units because of overlapping job assignments and interchangeable job duties, factors that we do not have in the instant case, and the fact that no union opposed the merger. Although prior bargaining history was a factor in the Board's decision not to merge the two remaining units, it also relied on the "dichotomy of job functions and interests" between the remaining two groups;" a similar dichotomy exist in the instant case. Id at 1105.

Secondly, the prior bargaining history in the instant case was effectively terminated when employees voted against union representation in February 1990. Furthermore, the fact that the Union stipulated in 1990 to a unit consisting of service technicians and parts department employees is of no moment. Such stipulations by parties are not binding for a future determination by a Regional Director and merely reflected the existing unit. See, *S.S. Joachim & Anne Residences*, 314 NLRB 1191 (1994).

The Employer also argues that the prevailing pattern of bargaining in Contra Costa County where the dealership is located demonstrates that any appropriate unit must include both the parts employees and the service technicians.⁹ *Dundee's Seafood, Inc.* 221 NLRB 1183, 1184 (1975), relied on by the Employer indicates that "the form that self organization has taken in an industry is one of the more significant factors in determining the appropriate unit." However, the Board in *Dundee's* cites a Supreme Court case, *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 442 (1965), which held that self-organization in an industry was one factor, although not the controlling factor, in the Board's determination. The Employer also refers to *Omni International Hotel*, 283 NLRB 475 (1987) and *Westin Hotel*, 277 NLRB 1506 (1986) as support for this position. However, in *Omni*, the Board found a unit limited to engineering department employees to be appropriate despite the employer's contention that an overall unit was warranted. There the Board also distinguished *Westin* as a situation where the prevailing area-wide pattern bargaining favored a overall unit. Significantly, in *Westin* another union sought to represent the broader unit; also, the Board noted that, unlike here, as discussed above, the evidence of unique skills and separate supervision regarding the smaller petitioned-for unit was not strong. In any event, the evidence regarding practice elsewhere with respect to the composition of the bargaining unit is not determinative of the appropriateness of the petitioned-for unit here, given the evidence, discussed above, showing that

⁹ In support of this position the Employer introduced into evidence the current collective bargaining agreement between the New Car Dealers of Contra Costa (County) and Petitioner and Teamsters General Truck Drivers and Helpers No. 315 and the current agreement between Parker Robb Chevrolet and Buick and Petitioner and Teamsters General Truck Drivers and Helpers No. 315. Both agreements include parts employees and service technicians in the same unit which also includes several Teamster classifications. In addition, the Employer put an organizer for the Petitioner on as its witness and he testified that he did not know if there were any agreements between Petitioner and car dealerships in Contra Costa County that excluded parts employees but he assumed that there were not.

the unit is appropriate. See *Washington Palm, Inc.*, 314 NLRB 1122, 1128 (1994); *J.O. Rhodes & Gilbert Corp.*, 106 NLRB 536, 538 fn.7 (1953).

I find, therefore, that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians, including trainees, employed by the Employer at its Walnut Creek, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 37 employees in the unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.¹⁰ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the issuance of the Notice of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by, **MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190 OF NORTHERN CALIFORNIA, LOCAL LODGE NO. 1173, INTERNATIONAL ASSOCIATION OF MACHINIST AND AEROSPACE WORKERS, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may

¹⁰ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before August 18, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 25, 2000.

Dated at Oakland, California this 11th day of August, 2000.

/s/ Veronica I. Clements
Veronica I. Clements, Acting
Regional Director
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